

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

Ann Thompson,)	
Charging Party,)	
)	HRB CASE NO. 0109014160
vs.)	
)	
Community Medical Center,)	FINAL AGENCY DECISION
Respondent.)	

Charging Party, Thompson, filed a complaint with the Department of Labor and Industry (Department) on December 21, 2009, which alleged discrimination in employment on the basis of age and disability. Following an informal investigation, the Department determined on June 21, 2010, that a preponderance of the evidence did not support Thompson's allegations.

Thompson objected to the Notice of Dismissal and appealed to the Montana Human Rights Commission. On September 22, 2010, the Commission considered the matter and sustained Thompson's objection and certified the case for an administrative hearing before the Hearings Bureau of the Department of Labor and Industry. The hearings officer issued an Order Granting Summary Judgment on August 25, 2011.

The hearings officer determined that there were no genuine issues of material fact stating that precluded summary disposition. The hearing officer noted that after Respondent Community Medical Center articulated a legitimate, nondiscriminatory reason for its employment actions, Thompson bore the burden of persuasion to demonstrate that the proffered reason was pretext for discrimination. On the record established prior to a hearing on the merits, the hearing officer determined that Thompson had not established a basis upon which any reasonable fact-finder could avoid deciding the case in favor of the Community Medical Center.

Consequently, the hearing officer determined it would be error to deny summary judgment and force the parties to a hearing.

Thompson filed an appeal with the Montana Human Rights Commission (Commission). The Commission considered the matter on November 17, 2011. Elizabeth O'Halloran, attorney, appeared and presented oral argument on behalf of Thompson. Candace Fetscher, attorney, appeared and presented oral argument on behalf of Community Medical Center.

STANDARD OF REVIEW

The Commission may reject or modify the conclusions of law and interpretations of administrative rules in the hearing officer's decision but may not reject or modify the findings of fact unless the Commission first reviews the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. *Admin. Rules of Mont. 24.9.123(4)*. A factual finding is clearly erroneous if it is not supported by substantial evidence in the record, if the fact-finder misapprehended the effect of the evidence, or if a review of the record leaves the Commission with a definite and firm conviction that a mistake has been made. *Denke v. Shoemaker*, 2008 MT 418, ¶ 39, 347 Mont. 322, ¶ 39, 198 P.3rd 284, ¶ 39. The Commission reviews conclusions of law to determine whether the hearing officer's interpretation and application of the law is correct. *See, Denke*, ¶ 39.

DISCUSSION

After careful consideration of the complete record and the argument presented by the parties, the Commission finds no genuine issues of material fact on the record before the hearing officer precluded summary judgment in this case. Therefore, the Commission affirms that the hearing officer's decision in its entirety.

ORDER

IT IS HEREBY ORDERED, that the appeal of Ann Thompson is denied.

IT IS FURTHER ORDERED that the Commission hereby adopts and incorporates the entire of the hearing officer's Order Granting Summary Judgment, dated August 25, 2011, within this Final Agency Decision.

Either party may petition the district court for judicial review of the Final Agency Decision. *Sections 2-4-702 and 49-2-505, MCA*. This review must be requested within 30 days of the date of this order.

DATED this 21st day of November 2011.

/L.M.Minich/
L.M. Minich, Chair
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing FINAL AGENCY DECISION was mailed to the following by U.S.

Mail, postage prepaid, on this 21st day of November 2011.

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/Tam Newby/
Tam Newby, Legal Secretary
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